APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,945	12/14/2001	Kurt Albert Grassman	DE920000087US1	7397

7590   09/09/2005

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EXAMINER
RAMPURIA, SATISH

ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/016,945	GRASSMAN ET AL.
	Examiner	Art Unit	
	Satish S. Rampuria	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _23 June 2005_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-21_ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-21_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _06/17/2005_ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Response to Amendment

1.   This action is in response to the amendment received on 02/17/2005.

2.   The rejection under 35 U.S.C. §101 to claims 1-7 is withdrawn in view of applicant's

amendment.

3.   Claims amended by the applicant: 1, 8, and 15.

4.   Claims pending in the application: 1-21.

Response to Arguments

5.   Applicant's arguments with respect to claim 1 have been considered but are moot in view

of new ground(s) of rejection.

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7.   A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Claim Rejections - 35 USC § 103

8.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this
title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a
whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said
subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9.   Claims 1, 3, 4, 8, 10, 11, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being

unpatentable over US Patent No. 5,999,740 to Rowley (hereinafter called Rowley) in view of

US Patent No. 5,948,101 to David et al. (hereinafter called David).

Per claim 1:

Rowley disclose:

-   A method for updating programs (col. 1, line 28 "a software update mechanism") to be

    used in a network (col. 1, line 33 "from the remote server") the method comprising the

    steps of:

-   providing a network comprised of a plurality of first type computers having a limited

    function range relative to a plurality of second type computers having a respective

    extended function range (col. 2, lines "a number of client computer");

-   providing in said network, a service being defined as comprising update services

    providing an updated facilities version to be performed by the second type computers to

    said first type computers (col. 2, lines 13-18 "the server has number of application

    directories one for each application...holds the new or amended application files for

    different versions of the application...");

- selecting a first subgroup comprising at least one first type computer (col. 2, lines 1-2 "a computer network comprising a number of client computers");

- selecting a second subgroup comprising at least one of the second type of computers (col. 2, lines 2-3 "a number of server computers") for providing said updated facilities version exclusively to first type computers (col. 2, lines 12-18 "the server has a number of application directories... holds... application files for different versions of the application") until a predetermined condition has occurred (col. 2, lines 41-42 "flag which indicates access permissions of the file");

- loading said at least one computer of the first subgroup with said updated facilities version (col. 3, lines 43-44 "upload a new or updated version of a software application onto the servers") during continued operation of the unselected plurality of first type computers with a former version means (col. 4, lines 12-13 "uploader displays a list of the existing software applications, along with their version numbers").

Rowley does not explicitly disclose issuing reboot requests exclusively from at least one of the second type of computers in said second subgroup to at least one of the first type of computers in said first subgroup; and responsive to said reboot request, sending boot messages from said at least one of the first type computer in said first subgroup to said at least one of said second type computer in the second subgroup.

However, David discloses in an analogous computer system issuing reboot requests exclusively from at least one of the second type of computers in said second subgroup to at least one of the first type of computers in said first subgroup; and responsive to said reboot request,

sending boot messages from said at least one of the first type computer in said first subgroup to said at least one of said second type computer in the second subgroup (col. 4, lines 32-42 "OMC 37 is powered-up or reset such that booting thereof begins, STEP 121. OMC 37 reads a bootstrap loader program from ROM 39 and begin executing it. The bootstrap program reads seed letterbug 43 and broadcasts a boot request therewith onto network 15, STEP 123. This boot request is of the same type that CPs 11 use to boot (serviced by boot server 19 within server 17). However, according to the present invention, instead of transmitting a conventional particularized letterbug, seed letterbug 43 is transmitted").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of requesting a program to during the rebooting of computer as taught by David into the method of updating the software/program as taught by Rowley. The modification would be obvious because of one of ordinary skill in the art would be motivated to have a request during the boot up of a computer to have an up-to-date program as suggested by David (col. 1 to 2, lines 57-66 and 1-20).

Per claim 3:

The rejection of claim 1 is incorporated, and further, Rowley disclose:

-    distributing the updated facilities version among the second type of computers (col. 3, lines 42-43 "upload a new or updated version of a software application onto the servers").

Although, Rowley teach provide the mechanism for updating the program/software. Rowley is silent on preventing computers from providing services as long as they are not equipped with the updated facilities version. However, this feature deemed to be inherent to the Rowley system, Rowley system shows updating only those which needed update without going through a full

upload of the application, col. 4, lines 48-51. Rowley system would not function properly if the
un-updated version were running with an updated version of application.

Per claim 4:

The rejection of claim 1 is incorporated, and further, Rowley disclose:

-   which said first type of computers are embedded controllers (col. 2, lines 1-2 "a number
    of sever computers") and the service of the second type computers comprising the
    provision of code loads to the first type of computers (col. 4, lines 8-9 "files server 102
    stores a number of application files 104, forming a number of software applications").

Claims 8, 10-11 are the apparatus claims corresponding to method claims 1, 3-4 respectively,
and rejected under the same rational set forth in connection with the rejection of claims 1, 3-4
respectively, above.

Claims 15, 17-18 are the computer program product claims corresponding to method claims 1, 3-
4 respectively, and rejected under the same rational set forth in connection with the rejection of
claims 1, 3-4 respectively, above.

10.   Claims 2, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over
Rowley in view of David and further in view of US Patent No. 6,701,356 to Condict et al.
(hereinafter called Condict).

Per claim 2:

- distributing said updated facilities version over the remaining plurality of unselected

computers (col. 3, lines 42-43 "upload a new or updated version of a software application

onto the servers").

Rowley does not explicitly disclose testing at least one computer of the first subgroup with said

updated facilities version during continued operation of the unselected plurality of first type

computers and if a test result corresponds to a predetermined result scheme.

However, Condict discloses in an analogous computer system testing at least one

computer of the first subgroup with said updated facilities version during continued operation of

the unselected plurality of first type computers and if a test result corresponds to a

predetermined result scheme (col. 9, lines 28-30 "verification testing... performed to verify the

network is operation... testing is complete the new SPF images are ready").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to incorporate the method of testing the network operation for updated

SPF images as taught by Condict into the method of updating the software/program as taught by

the combination system of Rowley and David. The modification would be obvious because of

one of ordinary skill in the art would be motivated to test the updated version of software to

ensure the proper operation of the software as suggested by Contict (col. 3, lines 38-50).

Claim 9 is the apparatus claim corresponding to method claim 2 and rejected under the same

rational set forth in connection with the rejection of claim 2 above.

Claims 16 is the computer program product claim corresponding to method claim 2 and rejected

under the same rational set forth in connection with the rejection of claim 2 above.

11.   Claim 5-7, 12-14, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Rowley in view of David and further in view of US Patent No. 6,480,901 to Weber et al.

(hereinafter called Weber).

Per claim 5-7:

The rejection of claim 1 is incorporated, and further, Rowley does not explicitly disclose

updating programs in an enterprise network.

However, Weber discloses in an analogous computer system updating programs in an

enterprise network (col. 4, lines 49-51 "communicate with all I/O devices on the enterprise,

operations such as "firmware upgrades" may be performed en mass to common device types").

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to incorporate the method of updating firmware on a enterprise network

as taught by Weber into the method of updating the software/program as taught by the

combination system of Rowley and David. The modification would be obvious because of one

of ordinary skill in the art would be motivated to have updating program on the enterprise

network to provide the updated to the devices connected via proxy devices as suggested by

Weber (col. 2, lines 3-20).

Claims 12-14 are the apparatus claims corresponding to method claims 5-7 respectively, and

rejected under the same rational set forth in connection with the rejection of claims 5-7

respectively, above.

Claims 19-21 are the computer program product claims corresponding to method claims 5-7

respectively, and rejected under the same rational set forth in connection with the rejection of
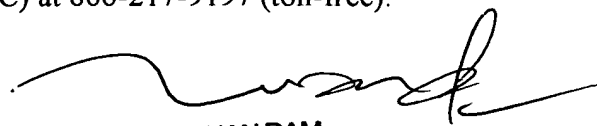
claims 5-7 respectively, above.

Conclusion

12.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**.

The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every

other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this

application should be directed to the **TC 2100 Group receptionist: 571-272-2100**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, **Tuan Q. Dam** can be reached on **(571) 272-3695**. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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09/06/2005